

AMENDED IN ASSEMBLY APRIL 24, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1603

Introduced by Assembly Member Bustamante

(Principal coauthor: Assembly Member Villaraigosa)

**(~~Coauthors: Assembly Members Escutia, Scott, Shelley,~~
~~Sweeney, and Wayne~~)**

**(Coauthors: Assembly Members Aroner, Brown, Cardoza,
Escutia, Honda, Knox, Kuehl, Lempert, Mazzoni, Ortiz,
Scott, Shelley, Sweeney, Washington, and Wayne)**

March 31, 1997

An act to amend Section 1714.45 of the Civil Code, relating to liability, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1603, as amended, Bustamante. Liability: common consumer products.

Existing law provides that in a product liability action, a manufacturer or seller is not liable if the product is a common consumer product intended for personal consumption, such as, among other things, tobacco, is inherently unsafe, and is known to be unsafe by the ordinary consumer, as specified.

This bill would provide that the above provision does not apply to an action brought ~~on behalf of~~ by a public entity to recover the value of benefits provided to individuals injured by *or tobacco-related illness caused by* the tortious conduct of a manufacturer ~~or seller~~ of tobacco products. The bill would

state that it does not constitute a change in, but is declaratory of, existing law.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and
2 declares ~~all~~ both of the following:

3 (a) That the Attorney General of the State of
4 California has not joined the 22 other state attorneys
5 general who have filed civil actions against tobacco
6 companies to recover the tobacco-related costs incurred
7 by their states.

8 ~~(b) That the assertion that Section 1714.45 of the Civil~~
9 ~~Code bars the State of California from filing a civil action~~
10 ~~against tobacco companies to recover the tobacco-related~~
11 ~~costs incurred by the State of California is based on a~~
12 ~~misinterpretation of that section.~~

13 ~~(c) That, although there presently exists a sound legal~~
14 ~~basis for the State of California to file a civil action against~~
15 ~~tobacco companies to recover the tobacco-related costs~~
16 ~~incurred by the State of California, the Legislature by~~
17 ~~their states because the Attorney General asserts that a~~
18 ~~clarification of Section 1714.45 of the Civil Code is~~
19 ~~necessary before such a civil action can be filed.~~

20 ~~(b) That, although there is a difference of opinion over~~
21 ~~whether any clarification of Section 1714.45 is necessary,~~
22 ~~the Legislature recognizes that the filing of such a civil~~
23 ~~action would be facilitated by a clarification of the law~~
24 ~~relating to tobacco products.~~

25 SEC. 2. Section 1714.45 of the Civil Code is amended
26 to read:

27 1714.45. (a) In a product liability action, a
28 manufacturer or seller shall not be liable if:

29 (1) The product is inherently unsafe and the product
30 is known to be unsafe by the ordinary consumer who

1 consumes the product with the ordinary knowledge
2 common to the community; and

3 (2) The product is a common consumer product
4 intended for personal consumption, such as sugar, castor
5 oil, alcohol, tobacco, and butter, as identified in comment
6 i to Section 402A of the Restatement (Second) of Torts.

7 (b) For purposes of this section, the term “product
8 liability action” means any action for injury or death
9 caused by a product, except that the term does not
10 include an action based on a manufacturing defect or
11 breach of an express warranty.

12 (c) This section is intended to be declarative of and
13 does not alter or amend existing California law, including
14 *Cronin v. J.B.E. Olson Corp.*, (1972) 8 Cal. 3d 121, and
15 shall apply to all product liability actions pending on, or
16 commenced after, January 1, 1988.

17 (d) This section does not apply to an action brought ~~on~~
18 ~~behalf of~~ by a public entity to recover the value of benefits
19 provided to individuals injured by a tobacco-related
20 illness caused by the tortious conduct of a manufacturer
21 or seller of tobacco products, including, but not limited to,
22 an action brought pursuant to Section 14124.71 of the
23 Welfare and Institutions Code. This subdivision does not
24 constitute a change in, but is declaratory of, existing law
25 relating to tobacco products.

26 SEC. 3. This act is an urgency statute necessary for the
27 immediate preservation of the public peace, health, or
28 safety within the meaning of Article IV of the
29 Constitution and shall go into immediate effect. The facts
30 constituting the necessity are:

31 In order to ensure that California files a civil action
32 similar to the civil actions filed by 22 other states and
33 recovers tobacco-related costs incurred by the state at the
34 earliest possible time, it is necessary that this act take
35 effect immediately.